

RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY
RE: MODIFICATION OF THE URBAN RENEWAL PLAN OF THE
WASHINGTON PARK URBAN RENEWAL AREA, PROJECT
NO. MASS. R-24 AND AUTHORIZATION TO PROCLAIM
BY CERTIFICATE THIS MINOR MODIFICATION

WHEREAS, the Urban Renewal Plan for the Washington Park Urban Renewal Area was adopted by the Boston Redevelopment Authority on January 16, 1963, and approved by the City Council of the City of Boston on February 18, 1963, and approved by the Mayor of the City of Boston on February 26, 1963; and

WHEREAS, it is the opinion of the Authority that the minor modification with respect to the establishment of a limited equity cooperative is consistent with the objectives of the Washington Park Urban Renewal Plan; and

WHEREAS, the Authority is cognizant of Chapter 781 of the Acts and Resolves of 1972 with respect to minimizing and preventing damage to the environment; and

WHEREAS, the proposed amendment to the Plan is a minor change and may be adopted within the discretion of the Authority pursuant to Section 1201 of said Plan;

NOW, THEREFORE BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY THAT:

Pursuant to Section 1201 thereof, the Washington Park Urban Renewal Plan, Project No. Mass. R-24 be and hereby is amended as follows:

1. That Section 602, Table A of the Washington Park Urban Renewal Plan entitled "Land Use and Building Requirements" is hereby modified by deleting therefrom the Permitted Use ascribed to Parcel C-2 within Item 4, and by substituting therefor a new Permitted Use for Parcel C-2 within Item 4 as follows:

"Permitted
Uses

Housing, limited to
rental or Limited Equity Cooperative use"

2. That the proposed modification is found to be minor modification which does not substantially or materially alter or change the Plan;
3. That all other provisions of said Plan not inconsistent herewith be and are continuing in full force and effect;

4. That it is hereby found and determined that the modification will not result in significant damage to or impairment of the environment and further, that all practicable and feasible means and measures have been taken to avoid or minimize damage to the environment; and
5. That the Director be and hereby is authorized to proclaim be certificate these minor modifications of the Plan, all in accordance with the provisions of the Urban Renewal Handbook, RHM 7207.1, Circular dated August 8, 1974.

MEMORANDUM

OCTOBER 26, 1988

TO: STEPHEN COYLE, DIRECTOR and the
BOSTON REDEVELOPMENT AUTHORITY

FROM: ANTHONY WILLIAMS, ASSISTANT DIRECTOR FOR NEIGHBORHOOD HOUSING AND
DEVELOPMENT
KEVIN J. MORRISON, DEPUTY GENERAL COUNSEL

SUBJECT: WASHINGTON PARK URBAN RENEWAL AREA
PROJECT NO. MASS. R-24
PROCLAIMER OF MINOR MODIFICATION OF URBAN RENEWAL PLAN

SUMMARY: This memorandum requests that the Authority adopt a minor modification of the Washington Park Urban Renewal Plan with respect to the establishment of a limited equity cooperative project on Parcel C-2; and to authorize the Director to proclaim by certificate this minor modification.

On April 3, 1964, the Authority conveyed Washington Park Urban Renewal Parcel C-2 by execution of a Land Disposition Agreement and Deed to Charlame Park Homes, Inc., a non-profit entity established by the Charles Street AME Church for the construction and operation of a low-income housing development known as Charlame Park Homes.

The residents of Charlame Park Homes have, for the past four years, worked to establish ownership of their homes through the vehicle of a limited equity cooperative. Over ninety (90) percent of the residents qualify for Section 8 subsidies. The remaining residents are eligible for assistance under various state-sponsored, first-time homebuyer programs. The limited equity cooperative concept proposed by the residents of Charlame Park Homes would be consistent with the deed covenants which limit the use of Charlame Park Homes for housing low and moderate income tenants until the year 2003.

As a limited equity cooperative, equity appreciation would be limited in accordance with regulations established by the Department of Housing and Urban Development, and long-term affordability of the housing units to residents and future unit-owners of Charlame Park Homes would be assured. However, the conversion of Charlame Park Homes from rental housing to a limited equity cooperative form of ownership, although consistent with the objectives of the Washington Park Urban Renewal Plan nevertheless requires a modification of the underlying urban renewal plan in accordance with a resolution adopted on March 1, 1984 by the Authority requiring prior approval of any conversion of a structure from rental apartment units to condominiums and/or cooperatives.

It is the opinion of the Chief General Counsel that the proposed modification is minor and does not substantially or materially alter or change the Plan. This modification may, therefore, be effected by vote of the Authority, pursuant to Section 1201 of the Washington Park Urban Renewal Plan.

An appropriate Resolution is attached.

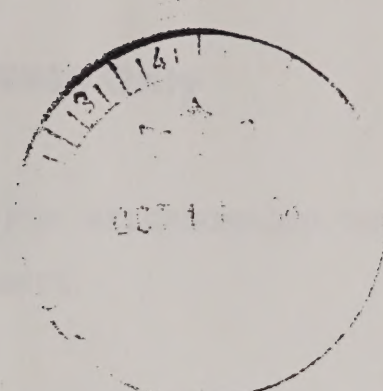
BOSTON
REDEVELOPMENT
AUTHORITY

Raymond L. Flynn
Mayor

Stephen Coyle
Director

One City Hall Square
Boston, MA 02201
(617) 722-4300

October 11, 1988



Ms. Roberta Sanders-Smiley
Cornerstone Development Co.
90 Warren Street
Roxbury, MA 02119

Re: Charlame Park Homes I, Washington Park, Conversion To Limited
Equity Cooperative

Dear Ms. Smiley:

In accordance with our telephone conversation today, this is to confirm that the above-captioned matter should be placed on the Agenda for the next regular meeting of the Boston Redevelopment Authority, which is scheduled for October 27, 1988 at 2:30 P.M. For your information, please find enclosed a copy of the draft Board Memorandum. Also, for background information, enclosed are copies of the Minutes of the March 1, 1984 meeting with the relevant resolution noted, the Massachusetts Appeals Court decision in Boston Redevelopment Authority v. Charles River Park "C" Company, 21 Mass. App. Ct. 777, further appellate review denied, 397 Mass. 1103 (1986), and a recent Supreme Judicial Court decision denying, in part, certain motions for relief from judgment. If you have any questions, do not hesitate to call me at 242-7400, ext. 566.

Sincerely,

Kevin J. Morrison
Deputy General Counsel

KJM/tmm

cc: Anthony Williams ✓
Jean Lynn
Mark Bressler

Enclosures: a/s

KM6/I



DRAFT

OCTOBER 13, 1988

**For
Discussion Purposes Only**

TO: STEPHEN COYLE, DIRECTOR and the
BOSTON REDEVELOPMENT AUTHORITY

FROM: ANTHONY WILLIAMS, ASSISTANT DIRECTOR FOR NEIGHBORHOOD HOUSING AND
DEVELOPMENT
KEVIN J. MORRISON, DEPUTY GENERAL COUNSEL

SUBJECT: WASHINGTON PARK URBAN RENEWAL AREA
PROJECT NO. MASS. R-24
PROCLAIMER OF MINOR MODIFICATION OF URBAN RENEWAL PLAN

SUMMARY: This memorandum requests that the Authority adopt a minor modification of the Washington Park Urban Renewal Plan with respect to the establishment of a limited equity cooperative project on Parcel C-2; and to authorize the Director to proclaim by certificate this minor modification.

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The residents of Charlamé Park Homes have, for the past four years, worked to establish ownership of their homes through the vehicle of a limited equity cooperative. Over ninety (90) percent of the residents qualify for Section 8 subsidies. The remaining residents are eligible for assistance under various state-sponsored, first-time homebuyer programs. The limited equity cooperative concept proposed by the residents of Charlamé Park Homes would be consistent with the deed covenants which limit the use of Charlamé Park Homes for housing low and moderate income tenants until the year 2003.

As a limited equity cooperative, equity appreciation would be limited in accordance with regulations established by the Department of Housing and Urban Development, and long-term affordability of the housing units to residents and future unit-owners of Charlamé Park Homes would be assured. However, the conversion of Charlamé Park Homes from rental housing to a limited equity cooperative form of ownership, although consistent with the objectives of the Washington Park Urban Renewal Plan nevertheless requires a modification of the underlying urban renewal plan in accordance with a resolution adopted on March 1, 1984 by the Authority requiring prior approval of any conversion of a structure from rental apartment units to condominiums and/or cooperatives.

It is the opinion of the Chief General Counsel that the proposed modification is minor and does not substantially or materially alter or change the Plan. This modification may, therefore, be effected by vote of the Authority, pursuant to Section 1201 of the Washington Park Urban Renewal Plan.

An appropriate Resolution is attached.

MINUTES OF A REGULAR MEETING
OF THE BOSTON REDEVELOPMENT AUTHORITY

MARCH 1, 1984

The Members of the Boston Redevelopment Authority met in regular session at the office of the Authority, Board Room, City Hall, One City Hall Square, Boston, Massachusetts at 2:30 p.m. on March 1, 1984. The meeting was called to order by the Chairman, and upon roll call, those present and absent were as follows:

<u>Present</u>	<u>Absent</u>
Robert L. Farrell	James K. Flaherty
Joseph J. Walsh	
Clarence J. Jones	
William A. McDermott, Jr.	

A copy of the NOTICE OF MEETING, pursuant to Section 23B of Chapter 39, as amended, of the General Laws, with the CERTIFICATE AS TO SERVICE OF NOTICE OF MEETING attached thereto, was read and ordered spread upon the minutes of this meeting and filed for record.

NOTICE OF MEETING

Notice is hereby given in accordance with Section 23B of Chapter 39, as amended, of the General Laws that a regular meeting of the Boston Redevelopment Authority will be held at 2:30 p.m. on March 1, 1984, in the Boston Redevelopment Authority Board Room, City Hall, One City Hall Square, in the City of Boston, Massachusetts.

BOSTON REDEVELOPMENT AUTHORITY

By Kane Simonian

Title Secretary

February 24, 1984

CERTIFICATE AS TO SERVICE OF NOTICE OF MEETING

I, Kane Simonian, the duly appointed, qualified and acting Secretary of the Boston Redevelopment Authority, do hereby certify that on February 24, 1984, I filed in the manner provided by Section 23B of Chapter 39, as amended, of the General Laws, with the City Clerk of the City of Boston, Massachusetts, a NOTICE OF MEETING, of which the foregoing is a true and correct copy.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Authority this first day of March, 1984.

Kane Simonian
Secretary

VOTED: To approve the Director's recommendations relating to Petition Nos. Z-6794-6795, Z-6796, Z-6797-6798, Z-6799, Z-6810, Z-6591, Z-6604, Z-6607, Z-6627, Z-6640, Z-6654, Z-6667, Z-6688, Z-6693, Z-6699, Z-6700, Z-6718-6719, Z-6721, Z-6768-6774, Z-6802, Z-6804, Z-6806-6807, Z-6812-6813, Z-6814, Z-6819, Z-6820, Z-6822, Z-6823, Z-6829, Z-6830, Z-6838-6839.

The aforementioned Board of Appeal Referrals are filed in the Document Book of the Authority as Document No. 4416.

Copies of a memorandum dated March 1, 1984 were distributed re Opinion of the Chief General Counsel, attached to which were copies of a four-page memorandum dated March 1, 1984 from Arthur E. Shea, Chief General Counsel. This opinion was in response to an Authority vote of February 9, 1984 requesting an opinion as to the applicability of the recent Supreme Judicial Court decision in the case of Frank Bronstein et al v. The Prudential Insurance Company of America et al.

Mr. Arthur Shea, Chief General Counsel, addressed the Authority and answered the Members' questions.

On motion duly made and seconded, it was unanimously

VOTED: That the Authority hereby determines in each Urban Renewal Plan under its jurisdiction that the conversion of a structure or combination of structures from rental apartment units to condominiums and/or cooperatives in an Urban Renewal Project is a change in the Urban Renewal Plan relating to said Project that must receive the prior approval of the Authority; and

FURTHER

VOTED: That any developer who has made or is contemplating such a conversion be notified in writing by the Director and by further notice by publication in a newspaper of general circulation of the Authority's aforesaid determination, to the effect that the Authority must approve such a change in the Plan and that any developer who proceeds without such approval does so at his/her own peril; and

FURTHER

VOTED: That all said developers be notified in writing by the Director and by further notice by publication in a newspaper of general circulation that they are invited to the next Board Meeting on March 13, 1984 to present their views.

The aforementioned four-page memorandum dated March 1, 1984 from Arthur E. Shea, Chief General Counsel, is filed in the Document Book of the Authority as Document No. 4417.

Copies of several memoranda dated March 1, 1984 were distributed re Personnel Actions.

PERSONNEL MEMORANDUM NO. 1

On motion duly made and seconded, it was unanimously

VOTED: To accept the resignation of Josephine Riddick, Administrative Clerk, at an annual salary of \$12,722, effective January 27, 1984.

PERSONNEL MEMORANDUM NO. 2

On motion duly made and seconded, it was unanimously

VOTED: To upgrade and promote Linda S. Bourque, from Environmental Planning Specialist in Grade 13, at \$25,770 per annum to Director of Zoning, in Grade 16, at \$32,000 per annum, effective March 5, 1984.

PERSONNEL MEMORANDUM NO. 3

On motion duly made and seconded, it was unanimously

VOTED: To authorize the payment of registration fees, at an individual rate of \$50.00, for the Director, the Executive Director, any Board Member who wishes to attend, and nine staff members to be designated by the Director, for attendance at the Moderate Income Housing Conference sponsored by the Massachusetts Housing Finance Agency, the Massachusetts Executive Office of Communities and Development, and the Citizens Housing and Planning Association, at the Sheraton Boston Hotel on March 5, 1984.

PERSONNEL MEMORANDUM NO. 4

On motion duly made and seconded, it was unanimously

VOTED: To approve and authorize Mitch Fischman, Senior Project Coordinator and Shirley Muirhead, Design Project Coordinator for travel to Washington on March 2, 1984, to attend a meeting with the Design Arts staff of the National Endowment for the Arts Program.

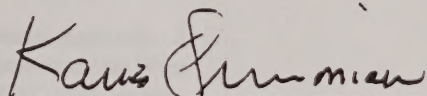
On motion duly made and seconded, it was unanimously

VOTED: That the next meeting of the Authority be held on March 15, 1984 at 2:00 p.m.

On motion duly made and seconded, it was unanimously

VOTED: To adjourn.

The meeting adjourned at 4:28 p.m.


Secretary

**BOSTON REDEVELOPMENT AUTHORITY vs. CHARLES RIVER
PARK "C" COMPANY & others.¹**

Suffolk. February 7, 1986. — April 2, 1986.

Present: GREANEY, C.J., WARNER, & FINE, JJ.

Condominiums. Urban redevelopment project. *Redevelopment of Land.*
Words. "Multi-family residential use."

The conversion of residential buildings located in the West End urban redevelopment area of Boston from rental units to condominium units is a change from "multi-family residential use," as that phrase is used in the West End Redevelopment Plan, and, consequently, requires prior approval for the conversion by the Boston Redevelopment Authority.
[]

Discussion of G. L. c. 121A and G. L. c. 121B respecting urban renewal projects. []

Holding that prior approval of the Boston Redevelopment Authority is required for the conversion of residential buildings located in the West End redevelopment area of Boston from rental units to condominium units, this court declined, in the circumstances, to order rescission of any real estate transactions with respect to the units which had already been sold as condominiums. []

CIVIL ACTION commenced in the Superior Court Department on March 19, 1984.

Motions for summary judgment were heard by *John J. Irwin, Jr., J.*

Saul A. Schapiro for the plaintiff.

Marcus E. Cohn for Prynne Realty Trust.

Stephen S. Young (*Miriam R. Goldstein* with him) for Hawthorne Residents Association, intervener.

Robert J. Muldoon, Jr., for Charles River Park "C" Company.

¹ Prynne Realty Trust, an entity which purchased the property and agreed to convert the building to condominiums and sell the units, and, as an intervener, Hawthorne Residents Association.

FINE, J. Is the conversion of residential buildings, located in the West End urban redevelopment area of Boston, from rentals to condominiums a change from "multi-family residential use," as that phrase is used in the West End Redevelopment Plan (the plan), such as to require prior approval for the conversion by the Boston Redevelopment Authority (BRA)? A Superior Court judge hearing the controversy on cross-motions for summary judgment determined that the change was not one requiring BRA approval. Relying on *Bronstein v. Prudential Ins. Co. of America*, 390 Mass. 701 (1984), we reverse.

The BRA, an "urban renewal agency" as defined in G. L. c. 121B, § 9, inserted by St. 1969, c. 751, § 1, and successor to the Boston Housing Authority, filed its complaint for declaratory and injunctive relief on March 19, 1984, to prevent the conversion to condominiums of two buildings known as Two and Nine Hawthorne Place unless the BRA gives its approval for such conversion.² The defendant Charles River Park "C" Company (CRP), a limited partnership organized in Massachusetts, is a successor in interest to Charles River Park, Inc., the original developer of the West End redevelopment project. The history of the project through 1972 is outlined in *Commissioner of Dept. of Community Affairs v. Boston Redevel. Authy.*, 362 Mass. 602, 604-609 (1972). The two apartment buildings at Hawthorne Place were constructed by CRP and, commencing no later than 1966, the 480 apartment units in the buildings were rented to tenants. Beginning in 1982, CRP began planning to convert the rental units to condominiums, and that plan has since been in the process of implementation. By mid-March of 1984, 162 tenants had signed purchase and sale agreements for their units. Shortly thereafter, a master deed to Hawthorne Place was recorded.

The West End plan requires that the Hawthorne Place buildings be devoted to "multi-family residential use." No one disputes that, for a period of fifty years from the adoption of the plan in 1957, the use restriction is binding upon the developers

² On March 22, 1984, another Superior Court judge denied the plaintiff's motion for a preliminary injunction.

and their successors pursuant to the provisions of various leases and covenants in deeds, as well as G. L. c. 121B, § 49.³ The Supreme Judicial Court decided the *Bronstein* case on January 5, 1984. On March 1, 1984, the BRA, in reliance on *Bronstein*, voted to require its prior approval for conversion of any dwelling units from rentals to condominiums or cooperatives in any urban renewal project in the city. Before the date of that vote, conversions of similar properties in urban renewal areas of the city had been accomplished without the BRA's having asserted any right of prior approval.

With respect to changes or modifications of the plan after the lease or sale of the land, the plan provides that it "may be modified . . . provided that such modifications are consented to by the lessee or purchaser of the property affected by the proposed modifications and by the [BRA]." The BRA "has been granted the basic responsibility for the proper execution of the plan." *Commissioner of the Dept. of Community Affairs v. Boston Redevel. Authy.*, 362 Mass. at 615. If proposed revisions of a plan are of such "nature and magnitude" that they "could fundamentally alter the essence of the project," approval of the Department of Community Affairs (DCA) (and the mayor and the city council) might also be required. *Id.* at 618. No party in this case takes the position that the conversion to condominium use is a change of such magnitude that approval is also required from DCA (or the mayor and the city council).

The defendants' position is that the operative language in the plan, "multi-family residential use," is unambiguous. It relates, they say, to the purpose for which the property is actually used by the occupants and not to the form of ownership. That proposition is not without support in logic and judicial

³The same obligation existed under G. L. c. 121, § 26LL, the statute governing urban renewal projects that was in effect in 1966 when the land was conveyed to the developer. General Laws, c. 121, §§ 23-26MMM, were repealed by St. 1969, c. 751, § 2. Section 1 of that statute replaced G. L. c. 121 with a new chapter, 121B. Hereinafter we will refer to the appropriate section in G. L. c. 121B rather than the statute in effect when the project was approved, G. L. c. 121. In no respect applicable to this case is there a material difference between the two statutes.

precedent. See *CHR General, Inc. v. Newton*, 387 Mass. 351 (1982), where, for zoning purposes, the court said, at 356-357, the city had to concede that "a building composed [of] condominium units does not 'use' the land it sits upon any differently than an identical building containing rental units." See also *Park West Village Associates v. Abrams*, 65 N.Y. 2d 716 (1985). But compare *Boston Five Cents Sav. Bank v. Department of Housing and Urban Development*, 768 F.2d 5 (1st Cir. 1985). Condominium ownership of dwelling units in large structures in Boston in 1957, when the plan was adopted, however, was certainly not common,⁴ and undoubtedly it was assumed by the drafters of the plan that the apartments would be occupied by renters. See *Commissioner of Dept. of Community Affairs v. Boston Redevel. Authy.*, 362 Mass. at 620-621. There is some indication in the plan itself that rentals were contemplated inasmuch as it refers to the statutory requirements that purchasers or lessees "give preference in the selection of tenants for dwelling units built in the project area to families displaced [by the project]. . . ." G. L. c. 121B, § 49, inserted by St. 1969, c. 751, § 1.

We come now to the effect of the *Bronstein* case on the present controversy. In *Bronstein*, the issue, in relevant part, was whether the conversion to condominium or cooperative ownership of rental housing units constructed as part of an urban redevelopment project approved under G. L. c. 121A would constitute a "fundamental change" in the project. The property involved, the apartment buildings at the Prudential Center in Boston, was required to be devoted to "residential use." If conversion to condominiums or cooperatives was a "fundamental change," the BRA would have been required to "proceed as if such application to change were an application for the original approval of the project." St. 1960, c. 652, § 13. If, on the other hand, the proposed change was not "fundamental" but was a change only of "the type and character of the buildings on the project," the change would not have required such

⁴The statute, G. L. c. 183A, which authorized condominium ownership in Massachusetts was first inserted in 1963. See St. 1963, c. 493, § 1.

elaborate proceedings. However, it would still have required the BRA's approval. *Ibid.* In determining whether the change was a fundamental one, the court adopted the definition of "fundamental change" set forth in *Commissioner of Dept. of Community Affairs v. Boston Redevel. Authy.*, 362 Mass. at 618. That definition was the one to be used in determining when a change in a project under G. L. c. 121B was so substantial as to require approval by the DCA (and also the mayor and the city council). To be a "fundamental change," such a change would have to "alter the essence of the project." *Id.*, quoted in *Bronstein, supra*, at 710.

The court in *Bronstein* determined that conversion of rental property to either cooperatives or condominiums would constitute a "fundamental change" in the project. The court reasoned: "Although rental property and condominium or cooperative ownership will result in residential use, they will not serve the same demands from the same tenants. We may assume that the conversion will force some tenants to move or to purchase the units for fear of encountering a similar occurrence at another apartment. Conversion Condominium Development: An Issue of Tenants' Rights, 30 Clev. St. L. Rev. 99, 103-106 (1981). Moreover, each form of residential use demands different obligations from the occupants. We note that tenants in a residential apartment building are required to pay rent. In contrast, the condominium owner acquires title to his unit and thereby assumes those duties required by ownership. A cooperative owner acquires a property interest in the entire structure and an 'owners' lease in his apartment." *Bronstein, supra* at 711.

As we note above, the only issue raised in the present case is whether the BRA may insist upon a right of prior approval of a conversion of rental units to condominiums. That issue turns on whether the conversion is a "modification" of the plan. A "modification" is of a lesser order than a "fundamental change." Thus, in order for us to rule in this case that BRA approval is required for the conversion of the rental units to condominiums, we need not go so far as to determine that the change is a fundamental one as defined in *Bronstein*. Fundamental changes of 121B projects, as we have said, require

more than BRA approval. Of course, realistically, not every change in a 121B project would be a "modification" requiring submission to the BRA. For BRA approval to be required, a change must be more than de minimis; it must be of some significance. But it does not have to be "fundamental." We do not have to define precisely how significant a proposed change in a 121B project must be to trigger the requirement of BRA approval because we view the reasoning of the court in the *Bronstein* case, supporting its conclusion that the proposed change in that case was a fundamental one, to be applicable, a fortiori, to the present case.

The only notable distinction between the facts of the two cases is that in the *Bronstein* case the project was approved under G. L. c. 121A and the West End project was approved under G. L. c. 121B. The difference between c. 121A projects and c. 121B projects are discussed in *Boston Edison Co. v. Boston Redevel. Authy.*, 374 Mass. 37, 52-53 (1977). See also Weinstein, Urban Renewal in Massachusetts, 47 Mass. L. Q. 5, 6-13 (1962). For purposes of the issue before us, we view the differences between the two statutory schemes as less meaningful than the similarities.

The differences are the following. Chapter 121A projects are privately initiated and privately owned throughout their existence, whereas c. 121B projects are publicly initiated and planned; developers of c. 121A projects receive tax concessions, whereas developers of c. 121B projects receive substantial benefits but not in the form of tax concessions; the procedures for the public approval of c. 121A projects in Boston are less stringent than are those for c. 121B projects.⁵ And finally, c. 121A was amended by St. 1975, c. 827, adding, in part, a new section (18D) containing the provision that "[n]o units of rental housing constructed as part of an approved project under this chapter may be converted to condominiums pursuant to this section." (The remainder of § 18D authorized the creation

⁵ Based upon these differences, the court ruled in the *Boston Edison Co.* case that in reviewing c. 121A projects it would apply a substantial evidence test, whereas in reviewing a c. 121B project, it would be governed by the arbitrary and capricious standard.

of condominiums in project areas after the date of enactment under certain specified conditions.) No similar provision governing condominium conversions was added to c. 121B.

On the other hand, the same legislative purpose underlies both c. 121A and c. 121B: to provide public assistance for the elimination of substandard, decadent, or blighted open areas in urban settings, and to promote sound community growth. G. L. c. 121A, § 2; G. L. c. 121B, § 45. Under both statutory schemes, the developer's agreement to undertake a project, according to a plan approved by numerous public agencies and officials, is the basis for the award to the developer of significant public benefits. As to both types of projects the use limitations in the plan are expressions of public policy designed to further the legislative goals. And, as to both types of projects, the BRA has the "primary responsibility for representing the public interest in the project and for supervising the execution of the plan." *Commissioner of Dept. of Community Affairs v. Boston Redevel. Authy.*, 362 Mass. at 613.

The differences between the two statutory schemes in relation to the type of public assistance (compare G. L. c. 121A, §§ 10 and 15, with G. L. c. 121B, § 46) and the approval process for a project (compare St. 1960, c. 652, § 12, with G. L. c. 121B, §§ 46-48), in our view, do not bear on the issue of the type of change in the execution of the project which is serious enough to trigger the requirement of BRA approval. Nor do we think the fact that c. 121A was amended to include § 18D, and c. 121B was not amended to include a similar provision, requires a different result. This is because the existence of § 18D does not enter into the *Bronstein* court's stated reasoning on whether a change from rental to condominium or cooperative use is fundamental. Moreover, the BRA is only seeking approval power; it is not seeking to have all condominium conversions in urban renewal projects barred. And, finally, the *Bronstein* court ruled that conversion of the units from rentals to cooperatives would constitute a fundamental change even though § 18D was applicable only to condominiums.

Thus, if conversion of the Prudential buildings from rentals to condominiums was a "fundamental change" from "residen-

tial use," it follows that a conversion from rentals to condominiums at Hawthorne Place is at least a significant change or "modification" of a plan the terms of which limit the property to "multi-family residential use" and, as such, BRA approval is required as a condition for such conversion.

It remains for us to determine the appropriate relief. The BRA did not bring suit against the individual condominium purchasers. We see nothing in the prayers for relief requesting that any real estate transactions with respect to the units at Hawthorne Place which have been completed to date be rescinded. Nor, in fairness under all the circumstances, do we consider such action appropriate. The practice of the BRA before March of 1984 was not to assert any right to be consulted prior to condominium conversions of apartment buildings in urban renewal areas. There is no language in the applicable statutes, contracts, or other documents expressly providing for the right which we determine the BRA has, and there has been no prior judicial decision granting the BRA that right. The BRA is entitled, however, to: (1) a declaration, limited to the West End plan, that any of the dwelling units not already sold as condominiums which must, according to the plan, be used for multi-family residential purposes may not in the future be sold as condominiums without the prior approval of the BRA; and (2) an order enjoining the defendants, Charles River Park "C" Company and Prynne Realty Trust, from selling in the future any rental unit in the project used for residential purposes without such approval.⁶

So ordered.

⁶We decline to rule on the validity of the BRA vote of March 1, 1984, which would affect properties in other urban renewal areas of the city which are subject to plans which are not before us. The issue of the validity of the vote has not been fully argued, and it is not necessary that we reach that issue to resolve the rights of the parties in this case.

COMMONWEALTH OF MASSACHUSETTS.

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH.

At Boston,

June 15

1988.

IN THE CASE No. SJC- 4686

BOSTON REDEVELOPMENT AUTHORITY

vs.

CHARLES RIVER PARK "C" COMPANY & others

pending in the Superior Court Department of the Trial

Court for the County of Suffolk No. 67538

Ordered, that the following entry be made in the docket; viz., —

By the Court,

Frederic J. Quinn-Tamm *for*
Clerk

June 15, 1988

OVER

BOSTON REDEVELOPMENT AUTHORITY vs. CHARLES RIVER PARK "C"
COMPANY & others. 1

June 15, 1988

Practice, Civil, Judgment, Relief from judgment, Appeal.
Judgment, Relief from judgment.

In earlier proceedings we denied the defendants' request for further appellate review of an Appeals Court reversal of summary judgment in their favor, and grant of declaratory and injunctive relief in the plaintiff's favor. 2 See Boston Redevelopment Auth. v. Charles River Park "C" Co., 21 Mass. App. Ct. 777, further appellate review denied, 397 Mass. 1103 (1986) (rehearing denied). The defendants thereafter took the position that final judgment had not entered, because the Appeals Court's rescript to the Superior Court stated only "Judgment reversed." Accordingly, the defendants filed counterclaims and a jury trial demand in the Superior Court. The plaintiff then successfully requested the Appeals Court to issue a second rescript nunc pro tunc indicating the granted declaratory and injunctive relief. The defendants, while continuing to contend, as they do to this court, that final judgment has not entered, moved for relief from judgment pursuant to Mass. R. Civ. P. 60 (b) (5) and 60 (b) (6), 365 Mass. 828 (1974). The Superior Court judge denied this motion without prejudice, and reported, pursuant to Mass. R. Civ. P. 64, 365 Mass. 831 (1974), a number of questions regarding the propriety of his acting on the rule 60 (b) motion. Following a determination by a single justice of the Appeals Court that he lacked the power to dismiss the report, we granted the defendants' request for direct appellate review.

Contrary to the defendants' consistent assertions, final judgment entered in the earlier proceedings, at least, on the Appeals Court's amended rescript. See G. L. c. 231A, § 1 (1986 ed.) ("declaratory judgment or decree . . . when made, shall have the force and effect of a final judgment or decree"). Because the prior proceedings had ended in final

1 Prynne Realty Trust and one intervener, Hawthorne Residents Association.

2 It also was open to the defendants to make to the Appeals Court, in a motion for rehearing, all arguments they now urge regarding the propriety of the Appeals Court decision.

judgment, the defendants' subsequent filing of counterclaims and accompanying jury trial demand was a nullity, denial of their rule 60 (b) motion was not an interlocutory order, and report of questions regarding that motion pursuant to rule 64 was erroneous. We treat the matter as an appeal from the denial of a motion under rule 60 (b) (5) and 60 (b) (6). Denial of that motion was proper, as the defendants have identified no circumstances making continued operation of the judgment inequitable, see rule 60 (b) (5), nor have they identified any extraordinary circumstances warranting relief under rule 60 (b) (6), given that they had a full and fair opportunity to contest the judgment through the ordinary appellate process. See Bromfield v. Commonwealth, 400 Mass. 254, 257 (1987).

The questions were reported erroneously. The plaintiff has asked that attorneys' fees and costs be awarded to the plaintiff against the defendants for all proceedings subsequent to the issuance of the Appeals Court's second rescript. See G. L. c. 231, § 6F (1986 ed.); Mass. R. A. P. 25, as amended, 378 Mass. 925 (1979). We think that such an order would be inappropriate, in light of the fact that the matter came before us, not on the defendants' appeal, but on questions reported by the judge. Because the report must be discharged, the order previously entered in the Superior Court is to be vacated and a new order is to be entered dismissing with prejudice the defendants' motion under rule 60 (b) (5) and 60 (b) (6).

So ordered.

Kenneth A. Cohen (James J. Dillon with him) for Prynn Realty Trust.

Robert J. Muldoon, Jr. (David A. Guberman with him) for Charles River Park "C" Company.

Saul A. Schapiro (Edward F. Kelly with him) for the plaintiff.

Paul G. Garrity & Stephen Y. Chow, for Hawthorne Residents Association, intervenor, were present, but did not argue.